Federal Court  Cour fédérale

**Date: 20211220**

**Docket: IMM-1477-21**

**Citation: 2021 FC 1444**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, December 20, 2021**

**PRESENT: The Honourable Mr. Justice Bell**

**BETWEEN:**

**SOUHIR MAALAOUI**
**RAWASSI REDHA O ELFAZZANI**
**RAYEN REDHA O ELFAZZANI**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

### I. Nature of the matter and facts

[1] Souhir Maalaoui and her two minor daughters, Rawassi Redha O Elfazzani and Rayen Redha O Elfazzani (the applicants) filed a refugee protection claim jointly with Redha Omar M Elfazzani, the applicants' husband and father, respectively. Mr. Elfazzani is a Libyan national;

Ms. Maalaoui is a Tunisian national; their daughters have dual Libyan and Tunisian citizenship. The family resided in Libya until 2011 and in Tunisia until 2018. In Tunisia, they stayed very briefly in Bizerte before settling in the city of Tunis.

[2] The applicants' claim for refugee protection was based on the allegations contained in Mr. Elfazzani's Basis of Claim Form (BOC Form). Mr. Elfazzani alleged that he had been persecuted in Tunisia because of his employment at the Libyan Consulate General in Tunis. He had received abduction and death threats through phone calls and text messaging, some of which had also targeted his wife and two daughters. In addition, their family home had been broken into while they were out. Mr. Elfazzani's former workshop in Libya had also been burned down during this period.

[3] Fearing for their lives, and afraid to return to Mr. Elfazzani's native Libya due to the climate of insecurity there, the family left Tunisia on December 12, 2018, to seek refuge in Canada.

[4] Before the Refugee Protection Division (RPD), only Mr. Elfazzani was recognized as a refugee within the meaning of the *United Nations Convention Relating to the Status of Refugees* [Convention]. As for the applicants, the RPD found that they had not met their burden of establishing the lack of an internal flight alternative (IFA) in Tunisia, specifically in the proposed city of Bizerte. The applicants argued, in vain, that they were afraid the people who had threatened their family would be able to track them down in Bizerte. Ms. Maalaoui had also

invoked a fear of the Tunisian authorities because of her resignation, from Canada, from her position as a dental hygienist in Tunisia’s largest prison.

[5] On February 16, 2021, the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada (IRB) upheld the RPD's decision. The applicants are seeking judicial review of that decision, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

## II. Decision under review

[6] In its reasons, the RAD stated that it believed, as the RPD did, that the applicants’ allegations regarding their fear of returning to Tunisia were based on assumptions and were not supported by the evidence in the record. It added that it appeared from the evidence that there was nothing to prevent the applicants from settling in Bizerte or finding housing there; nor was there anything that would prevent Mrs. Maalaoui from finding employment there either, since she is educated and had worked in Tunisia for a long time.

[7] The RAD also confirmed the RPD's conclusion that the applicants had not established a nexus between certain difficult realities affecting women in Tunisia and their personal situations.

## III. Relevant provisions

[8] The relevant provisions in this case are sections 96 and 97 of the IRPA, reproduced below:

| ***Immigration and Refugee Protection Act*, S.C. 2001, c. 27** | ***Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, ch. 27** |
|---|---|
| **Refugee Convention** | **Définition de réfugié** |
| **96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, | **96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques : |
| (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or | a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays; |
| **Person in need of protection** | **Personne à protéger** |
| 97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally | 97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée : |
| (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or | a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture; |

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|---|---|
| (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if | b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : |
| (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, | (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, |
| (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, | (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, |
| (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and | (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, |
| (iv) the risk is not caused by the inability of that country to provide adequate health or medical care. | (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats. |

## IV. Issue

[9] There is only one issue in dispute: whether the RAD's decision regarding the applicants' internal flight alternative in Tunisia was reasonable.

## V. Analysis

A. *Standard of review*

[10] The parties argue that the applicable standard of review is reasonableness. I agree. There is a presumption that this standard applies when a court reviews an administrative decision. (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 [*Vavilov*] at para. 25). This case does not fall within the exceptions to the application of the reasonableness standard. (*Vavilov*, at para 17).

B. *Reasonableness of RAD decision*

[11] A reasonable decision is one that is based on an "internally coherent and rational chain of analysis" and justified "in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para 85). For the reasons set out below, I find that the RAD's decision was reasonable.

[12] In order to prove that he or she is a refugee or a person in need of protection within the meaning of sections 96 or 97 of the IRPA, a refugee protection claimant must prove, among other things, that there is no reasonable internal flight alternative in his or her country of nationality. It is well established that the onus of proving this is on the claimant, and the claimant alone (*Hamid v Canada (Citizenship and Immigration)*, 2020 FC 145 at para 46).

[13] The test to be applied with respect to Internal Flight Alternatives is twofold. First, the decision maker must be satisfied, on a balance of probabilities, that the applicant faces a risk of persecution in the part of the country in which there is an internal flight alternative. Second, the

situation in that part of the country must be such that it would be unreasonable for the applicant to seek refuge there, taking into account all the circumstances, including his own. (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1994 1 FC 589, 109 DLR (4th) 682*; Castillo Garcia v Canada (Citizenship and Immigration)*, 2019 FC 347 [*Castillo Garcia*] at para. 26) The RAD correctly applied this test.

[14] As for the first part of the test, as was mentioned above, the RAD came to the same conclusion as the RPD, namely that the applicants' fears were based on assumptions and were not supported by the evidence in the record. The evidence showed neither that the authors of the threats would follow the applicants to Bizerte, nor that the fear of the Tunisian authorities was well-founded. With respect to the second part of the test, and as was also mentioned earlier, the RAD concluded, as did the RPD, that the applicants had failed to prove how the proposed IFA would be unreasonable. In its view, both the documentary evidence on the situation of women in Tunisia and the applicants' testimony supported the existence of an IFA in Bizerte.

[15] The applicants claim that the RAD erroneously considered Ms. Maalaoui's testimony regarding her fear of the Tunisian authorities due to her resignation and marriage to a Libyan citizen to be speculative for the simple reason that it was not included in their written account. This argument is without merit. All the RAD stated about this testimony was that it was an allegation that was not contained in the applicants' written account and that Ms. Maalaoui, when questioned about it by the RPD, was unable to provide any further information. Rather, it was another set of allegations that the RAD qualified as speculative, namely the allegations of fear that the authors of the threats would be able to track the applicants down in Bizerte. The RAD

justified this characterization by correctly stating that these threats were related to Mr. Elfazzani's employment in Tunisia and that he had not held that job for 3 years. In any event, I am of the opinion that such a deficiency would not be significant enough to justify the intervention of this Court.

[16] The applicants also claimed that the RAD failed to take their particular situation into account when conducting its IFA analysis. In their view, the fact that they were the wife and daughter of a Libyan citizen made them vulnerable throughout Tunisia. It appears from the decision that the RAD did take this particular characteristic into account in its analysis. In paragraph 20 of its decision, the RAD discussed the link between the applicants and Mr. Elfazzani. Furthermore, the record shows that the applicants had not presented any independent evidence linking their relationship with Mr. Elfazzani to a risk of persecution throughout Tunisia. In these circumstances, it was entirely open to the RAD to conclude as it did.

[17] The applicants also argue that the RAD failed to adequately assess the current circumstances in Tunisia. The applicants cite high unemployment and difficulties related to the Arab Spring to that effect. They add that the RAD failed to take into account evidence from the National Documentation Package that would confirm such circumstances.

[18] First, the hardships claimed by the applicants were general hardships that affect all Tunisians. The applicants did not establish that they would personally be at risk in Bizerte. Speculative and demographic risks are not sufficient to meet a claimant’s burden (*Homaire v Canada (Citizenship and Immigration)* [*Homaire*], 2019 FC 1197 at para 38). Specifically in

relation to the [TRANSLATION] “difficulties because of the Arab Spring”, the Federal Court has repeatedly found that the general risk of being a victim of crime in a country does not meet the burden of a refugee claimant. (*Homaire*, at para 39; *Anaya Moreno v Canada (Citizenship and Immigration)*, 2020 FC 396, at para 43).

[19] Second, the applicants are attempting to introduce new arguments and evidence that was not brought to the attention of the RAD or RPD. There is a general principle that reviewing courts cannot admit new evidence on judicial review. In this regard, the Federal Court of Appeal stated the following in *Gitxsan Treaty Society v Hospital Employees' Union*, [2000] 1 FC 135, 177 DLR (4th) 687:

> “The essential purpose of judicial review is the review of decisions, not the determination, by trial *de novo*, of questions that were not adequately canvassed in evidence at the tribunal or trial court.”

[20] It is also well established that an administrative decision maker is presumed to have weighed and considered all the evidence before him or her, unless the contrary is shown (*Boulos v Canada (Public Service Alliance)*, 2012 FCA 193, [2012] FCA No 832 at para 11). In this case, there is no evidence that the RAD failed to consider all the evidence in the record.

[21] The applicants further argued that their claim should be allowed because an objective of the IRPA is family reunification. The RAD found, and I agree, that this was not a determinative criterion in deciding whether a claimant is a refugee or a person in need of protection, as this Court found in *Akinfolajimi v Canada (Citizenship and Immigration*), 2018 FC 722 at para 5).

While I would have given more weight to family reunification, it is not my role on judicial review to revisit the weight given by the decision maker to the various considerations at play.

[22] Finally, the applicants argued that the RAD failed to consider Guideline 3: *Child Refugee Claimants: Procedural and Evidentiary Issues* and Guideline 4: *Women Refugee Claimants Fearing Gender-Related Persecution* [the Guidelines] in its IFA analysis. However, the reality is quite different, given that the RAD explicitly referred to the Guidelines in its decision and mentioned their consideration (RAD Decision at para 23). Moreover, "failure to refer to some relevant evidence will typically not justify a finding that the decision was made without regard to the evidence, prompting the Court to grant relief . . ." (*Castillo Garcia* at para 28). I therefore find that this argument is not relevant in establishing that the decision was unreasonable.

[23] For the reasons set out above, I find that the applicants have failed to establish that the RAD's decision was unreasonable.

## VI. Conclusion

[24] The decision meets the requirements of reasonableness. It was based on an "internally coherent and rational chain of analysis" and is justified "in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para 85).

**JUDGMENT in IMM-1477-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed, without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1477-21 |
| **STYLE OF CAUSE:** | SOUHIR MAALAOUI, RAWASSI REDHA O ELFAZZANI, RAYEN REDHA O ELFAZZANI v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
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| **DATED:** | DECEMBER 20, 2021 |

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